

TESTIMONY BEFORE THE JOINT COMMITTEE ON WAYS & MEANS

Quinsigamond Community College

March 25, 2015

Phillip Rapoza

Chief Justice

The Appeals Court

Commonwealth of Massachusetts

Senator Moore, Representative Dykema, members of the Joint Committee, thank you for the opportunity to come before you today on behalf of the Appeals Court.

Let me start by thanking the Committee, as well as the Legislature generally, for its assistance to the Appeals Court over the years. I would like to consider your continuing support as a reflection of the importance of the work we do. When our court was established in 1972 as the intermediate appellate court between the Supreme Judicial Court and the Trial Court, our primary role was to relieve the SJC of the ever-increasing caseload that it faced. As a result, the Appeals Court is, in the first instance, the recipient of virtually every appeal from every court in the Commonwealth, excluding only cases of first degree murder.

Like the Trial Court, but unlike the SJC, the Appeals Court has no control over its incoming caseload. We do not pick and choose which cases to take and by law we must deal with every appeal that comes through our doors. In a very real sense, we are the emergency room at the appellate level. The appeals that we hear come from every department of the Trial Court as well as state agencies such as the Appellate Tax Board, the Industrial Accident Review Board and the Employment Relations Board. In FY 2014 alone, just over 2000 appeals were filed in our court and our caseload in FY 2015 appears likely to match, if not exceed, that number.

Although the SJC does eventually take jurisdiction over some of the appeals that we receive either before or after we decide them, in FY 2014 approximately 97% of the appeals we received went no further than the Appeals Court. As a result, even though we are technically the state's intermediate court of appeals, as a practical matter we are the court of last resort for the overwhelming majority of Massachusetts residents seeking appellate relief.

We have every reason to believe that during FY 2016 year our appellate entries will remain at the same high level we experienced in FY 2014 and that we continue to experience during the current fiscal year. This is especially true as the numerous problems produced by a struggling economy come before our courts. The case is the same on the criminal side of the docket, where the collateral consequences of a conviction – such as deportation, statutorily enhanced sentences and the denial of government benefits – continue to drive the number of appeals.

The fact that the Appeals Court received over 2000 appeals in the last fiscal year indicates the extent of the task we face. There is no doubt that keeping up with the flow of cases requires that we work harder, but we must also work smarter and more efficiently. Consequently, we are making every effort to deal with our significant workload by being as innovative as possible, while better using the technology that we already have at our disposal. For example, we have

replaced the mailing of paper notices to counsel with the use of electronic notices and have piloted the use of a limited e-pay system. At the same time we have launched a pilot program for electronic docketing statements. Similarly, the internal processing of our court work has changed, with the majority of our decisions and orders now being produced paperlessly. We are also working with the Supreme Judicial Court and the Trial Court to get an e-filing pilot under way. The Appeals Court is thus committed to employing technology in ways that will help not only our court, but also the bar and the public that we serve.

As you can see, despite the large number of cases we are facing, the Appeals Court has endeavored to be both innovative and thoughtful, while maintaining the high level of performance that has been a hallmark of our court. Our mission, however, can be accomplished only if we are adequately staffed. I say this because our total number of employees, including Justices and staff, has declined by 13.1% since 2001. In that year our total number of all employees was 130. Currently it is 113. Needless to say, such a decline in staffing has taken its toll. Although we have done our best to leverage technology, the work of the court remains staff intensive and our budget is approximately 94% payroll.

Staff shortages are especially difficult to bear in a smaller court such as ours in which entire departments can be decimated through attrition and unfilled

vacancies. Moreover, there is little room for flexibility in a court where the number of remaining staff may be insufficient to fill gaps as they arise. Just as seriously, staff reductions at the Appeals Court have imposed a gravely disproportionate work load on those who continue to serve. Although our staff members routinely exert themselves to get the job done, they face serious challenges on a daily basis.

Let me give you just one small example. In 2001 our Clerk's Office had 16 staff members, a number that has since been reduced by 25% with only 12 staff currently working in that office. Despite the increased number of appellate entries during that time, we now have fewer assistant clerks and other staff to keep our docket current, to schedule oral arguments, to communicate with litigants and attorneys, to compile and distribute case materials, to assist justices with motions and petitions, and to release written decisions. This February, during the height of the worst snowfall on record in Boston, this small staff (almost all of whom use public transportation to come to work) entered hundreds of new cases, filed thousands of documents and managed to distribute well over one hundred cases to the Justices for review. Some even gave up their planned vacations to get the work done. Any further depletion of staff in our Clerk's Office, which is all but certain if

the Governor's budget is adopted, will bring case processing to the brink of collapse and cause backlogs where none now exist.

I was once asked what programs we have at the Appeals Court that could be eliminated, to which I replied that we have only one program. An appeal gets filed and we decide it. That's our program.

Doing justice is a constitutional imperative and it is not a program that can be eliminated, but it is a program that can be compromised. The FY 2016 budget proposed by the Governor in the amount of approximately \$12.3 million actually provides less money for the Appeals Court than was available to us in FY 2015. This is true even when the FY 2015 budget is adjusted to reflect the proposed 1.79% cut. Of even greater concern is that the Governor's FY 2016 proposal for the Appeals Court is approximately 9% below the \$13.5 million that we require to maintain our current service level. Indeed, the amount we have requested merely provides base funding for court operations, covers cost of living increases and maintains an already reduced staff at manageable levels.

I fully recognize the challenges that the Commonwealth will face during the next fiscal year. With that in mind, I want the Appeals Court to be a good citizen in the budget process, asking for no more than what it requires to do its job. I

strongly believe that the budget request of the Appeals Court for FY 2016 in the amount of \$13.5 million will accomplish that goal.

It is true that justice delayed is justice denied, and that is as true at the appellate stage as it is at the trial level. As Chief Justice of the Appeals Court I want to do my part – and for my court to do its part – to see that justice is done in a manner that the public has the right to expect. Our budget request will permit us to do exactly that in these difficult and challenging times. On the other hand, I can say without hesitation that - if adopted - the Governor's budget proposal will have the opposite effect, threatening our ability to do justice in a timely, effective and efficient manner.

I want to thank you, Senator Moore and Representative Dykema, for the opportunity to address the Committee. I appreciated the chance to share with you information concerning the work of the Appeals Court as well as the challenges we face, along with the budget that we believe will permit us to accomplish the important mission of our court. I would be pleased to answer any questions you may have.